

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

IN THE MATTER OF THE
APPLICATION OF

JOHN RAY MILLER,

Petitioner.

Case No. 3:08-CV-00077-LRH-(RAM)

ORDER

Petitioner has paid the filing fee. The Court has reviewed his Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (#1) and finds that it must be dismissed. 28 U.S.C. § 2243.

Petitioner is in the custody of the Nevada Department of Corrections pursuant to three judgments of conviction from the Second Judicial District Court of the State of Nevada, Case Nos. CR98-1034, CR98-1081, CR98-1096. Petition, p. 7 (#1, p. 8).¹ Petitioner is currently challenging the validity of those judgments in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in Miller v. Bates, Case No. 3:01-CV-00548-ECR-(RAM).

In this action, Petitioner claims that his custody violates the Fifth Amendment because the state charged him not by a grand-jury indictment, but by information.

The Court must dismiss this action for two reasons. First, despite all of Petitioner's arguments to the contrary, 28 U.S.C. § 2254 would govern this action because Petitioner is in custody pursuant to judgments of a state court. However, Petitioner insists that the Court not construe the Petition (#1) to be pursuant to § 2254. Petition, p. 2 (#1, p. 3). The Court dismisses this action because Petitioner has left the Court with no legal avenue to consider his claims.

¹Page numbers in parentheses refer to the Court's electronic images of the documents.

1 Second, Petitioner can raise his claim in Miller v. Bates, Case No. 3:01-CV-00548-ECR-(RAM), by
2 seeking leave to amend the petition in that action.² The Court dismisses this action because it
3 duplicates Miller v. Bates. See Slack v. McDaniel, 529 U.S. 473, 478 (2000).

4 IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice. The
5 Clerk of the Court shall enter judgment accordingly.

6 DATED this 3rd day of April, 2008.



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9 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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28 ²The Court expresses no opinion on whether Petitioner's claim has any merit or whether he
may actually amend his petition in Miller v. Bates.